

BY REP. KOPONEN

1 IN THE HOUSE

2

HOUSE BILL NO. 559

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to environmental cleanup responsibility."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

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(1) the generation, handling, storage, and disposal of hazardous substances pose an inherent danger of exposing the citizens, property, and natural resources of the state to substantial risk of harm or degradation;

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(2) the closing of operations and the transfer of real property utilized for the generation, handling, storage, and disposal of hazardous substances should be conducted in a rational and orderly way so as to mitigate potential risks; and

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(3) it is necessary to impose a precondition on a closure or transfer of these operations by requiring the adequate preparation and implementation of acceptable cleanup procedures for the closure or transfer.

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* Sec. 2. AS 46 is amended by adding a new chapter to read:

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CHAPTER 10. ENVIRONMENTAL CLEANUP RESPONSIBILITY.

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Sec. 46.10.011. DUTIES OF OWNER OR OPERATOR OF INDUSTRIAL ESTAB-

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LISHMENT PLANNING TO CLOSE OR TRANSFER OPERATIONS. (a) The owner or operator of an industrial establishment planning to close operations shall

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(1) notify the department in writing no more than five days

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after the public release of its decision to close operations; and

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(2) on closing operations or 60 days after the public

1 release of its decision to close or transfer operations, whichever is
2 later, submit a negative declaration or a copy of a cleanup plan to
3 the department for approval with a surety bond or other financial
4 security guaranteeing performance of the cleanup in an amount equal to
5 the cost estimate of the cleanup plan.

6 (b) The owner or operator of an industrial establishment plan-
7 ning to transfer operations shall

8 (1) notify the department in writing within five days of
9 the execution of an agreement of sale or option to purchase;

10 (2) submit, 60 days before the transfer of title, a nega-
11 tive declaration to the department for approval, or within 60 days
12 before transfer of title, deliver a copy of a cleanup plan to the
13 department for approval and attach a copy of the cleanup plan to a
14 proposed contract, agreement of sale, or option to purchase that may
15 be entered into with respect to the transfer of operations; if a sale
16 or transfer agreement or option has been executed before the submis-
17 sion of the plan to the department, the cleanup plan shall be trans-
18 mitted, by certified mail, before the transfer of operations, to each
19 party to a transaction concerning the transfer of operations, includ-
20 ing purchasers, bankruptcy trustees, mortgagees, sureties, and financ-
21 ers;

22 (3) obtain, upon approval of the cleanup plan by the de-
23 partment, a surety bond or other financial security approved by the
24 department guaranteeing performance of the cleanup plan in an amount
25 equal to the cost estimate for the cleanup plan.

26 (c) The cleanup plan and detoxification of the site shall be
27 implemented by the owner or operator, provided that the purchaser,
28 transferee, mortgagee, or other party to the transfer may assume that
29 responsibility under the provisions of this chapter.

1 Sec. 46.10.021. RULES AND REGULATIONS. The department shall,
2 under AS 44.62, adopt regulations establishing

3 (1) minimum standards for soil, groundwater, and surface
4 water quality necessary for the detoxification of the site of an
5 industrial establishment, including buildings and equipment, to ensure
6 that the potential for harm to public health and safety is minimized
7 to the maximum extent practicable, taking into consideration the
8 location of the site and surrounding ambient conditions;

9 (2) criteria necessary for the evaluation and approval of
10 cleanup plans;

11 (3) a fee schedule, as necessary, reflecting the actual
12 costs associated with the review of negative declarations and cleanup
13 plans and other provisions or procedures necessary to implement this
14 chapter.

15 Sec. 46.10.030. APPROVAL OF NEGATIVE DECLARATION OR REQUEST FOR
16 CLEANUP PLAN. The department shall, within 45 days of submission,
17 approve the negative declaration or inform the industrial establish-
18 ment that a cleanup plan shall be submitted.

19 Sec. 46.10.040. INSPECTIONS. The department shall, under the
20 schedule contained in an approved cleanup plan, inspect the premises
21 to determine conformance with the minimum standards for soil, ground-
22 water, and surface water quality and shall certify that the cleanup
23 plan has been executed and that the site has been detoxified.

24 Sec. 46.10.050. TRANSFER OF INDUSTRIAL ESTABLISHMENT CONTINGENT
25 ON COMPLIANCE. Notwithstanding the provisions of a law or regulation
26 to the contrary, the transfer of an industrial establishment is con-
27 tingent on compliance with this chapter.

28 Sec. 46.10.060. DEFERRAL; RELATIONSHIP TO OTHER LAW. (a) If
29 the premises of the industrial establishment would be subject to

1 substantially the same use by the purchaser, transferee, mortgagee, or
2 other party to the transfer, the implementation of a cleanup plan and
3 the detoxification of the site may be deferred until the use changes
4 or until the purchaser, transferee, mortgagee, or other party to the
5 transfer closes, terminates, or transfers operations if the department
6 approves the deferral.

7 (b) Within 60 days of receiving notice of the sale or realty
8 transfer and the certification that the industrial establishment would
9 be subject to substantially the same use, the department may approve,
10 conditionally approve, or deny the request for a deferral under (a) of
11 this section.

12 (c) On approval of the request for the deferral, the implementa-
13 tion of a cleanup plan and detoxification of the site is deferred.

14 (d) On denial of the request for the deferral, the cleanup plan
15 and detoxification of the site shall be implemented under this chap-
16 ter.

17 (e) The authority to defer implementation of the cleanup plan
18 under (a) of this section may not be construed to limit, restrict, or
19 prohibit the department from directing site cleanup under another law
20 or regulation, but shall be solely applicable to the obligations of
21 the owner or operator of an industrial establishment under the pro-
22 visions of this chapter. Another provision of this chapter may not be
23 construed to limit, restrict, or prohibit the department from direct-
24 ing site cleanup under another law or regulation.

25 Sec. 46.10.070. BANKRUPTCY PROCEEDINGS. An obligation imposed
26 by this chapter constitutes a lien or claim that may not be limited or
27 discharged in a bankruptcy proceeding. Each obligation imposed by
28 this chapter constitutes continuing regulatory obligations imposed by
29 the state.

1 Sec. 46.10.080. FAILURE TO COMPLY WITH CHAPTER. (a) The fail-
2 ure of the transferor to comply with a provision of this chapter

3 (1) is grounds for voiding the sale or transfer of an
4 industrial establishment or a real property used in connection with an
5 industrial establishment by the transferee;

6 (2) entitles the transferee to recover damages from the
7 transferor; and

8 (3) renders the owner or operator of the industrial estab-
9 lishment strictly liable, without regard to fault, for cleanup and
10 removal costs and for direct and indirect damages resulting from the
11 failure to implement the cleanup plan.

12 (b) The failure to submit a negative declaration or cleanup plan
13 under AS 46.10.011 is grounds for the department, after notice and
14 hearing, to void the sale. A person aggrieved by an order of the
15 department under this subsection may appeal the order to the superior
16 court.

17 (c) A person who knowingly gives or causes to be given false
18 information or who fails to comply with this chapter is liable for a
19 penalty of not more than \$25,000 for each offense. If the violation
20 is of a continuing nature, each day during which it continues consti-
21 tutes an additional and separate offense. An officer or management
22 official of an industrial establishment who knowingly directs or
23 authorizes the violation of a provision of this chapter is personally
24 liable for the penalties established in this subsection.

25 Sec. 46.10.100. DEFINITIONS. In this chapter

26 (1) "cleanup plan" means a plan for the cleanup of indus-
27 trial establishments, approved by the department, that may include

28 (A) a description of the locations, types, and quan-
29 tities of hazardous substances that will remain on the premises;

1 (B) a description of the types and locations of stor-
2 age vessels, surface impoundments, or secured landfills contain-
3 ing hazardous substances;

4 (C) recommendations regarding the most practicable
5 method of cleanup;

6 (D) a cost estimate of the cleanup plan;

7 (E) graphic and narrative descriptions of geographic
8 and hydrogeologic characteristics of the industrial establish-
9 ment; and

10 (F) evaluation of all residual soil, groundwater, and
11 surface water contamination;

12 (2) "close" or "closing" means

13 (A) to cease all operations that involve the genera-
14 tion, manufacture, refining, transportation, treatment, storage,
15 handling, or disposal of hazardous substances;

16 (B) to temporarily cease operations for a period of
17 not less than two years;

18 (C) to be a party to or subject to a transaction or
19 proceeding through which an industrial establishment becomes
20 nonoperational for health or safety reasons;

21 (3) "department" means the Department of Environmental
22 Conservation;

23 (4) "hazardous substances"

24 (A) means the elements and compounds, including petro-
25 leum products, that are defined as hazardous by the department,
26 after public hearing, and that are consistent to the maximum
27 extent possible with the list

28 (i) of hazardous substances adopted by the En-
29 vironmental Protection Agency under 33 U.S.C. sec. 1321

1 (Section 311 of the Federal Water Pollution Control Act
2 Amendments of 1972); and

3 (ii) of toxic pollutants designated by Congress or
4 the Environmental Protection Agency under 33 U.S.C. sec.
5 1317 (Section 307 of the Federal Water Pollution Control Act
6 Amendments of 1972); and

7 (B) excludes sewage and sewage sludge;

8 (5) "industrial establishment"

9 (A) means any place of business engaged in operations
10 that involve the generation, manufacture, refining, transporta-
11 tion, treatment, storage, handling, or disposal of hazardous
12 substances on site, above or below ground, having a Standard
13 Industrial Classification number within 22-39 inclusive, 46-49
14 inclusive, 51 or 76 as designated in the Standard Industrial
15 Classifications Manual prepared by the Office of Management and
16 Budget in the Executive Office of the President of the United
17 States;

18 (B) does not include those facilities or parts of
19 facilities subject to operational closure and post-closure main-
20 tenance requirements under 42 U.S.C. sec. 6901, et seq. (Solid
21 Waste Disposal Act) or an establishment engaged in the production
22 or distribution of agricultural commodities;

23 (6) "negative declaration" means a written declaration
24 submitted by an industrial establishment and approved by the depart-
25 ment that (A) there has been no discharge of hazardous substances on
26 the site; or (B) any discharge has been cleaned up under procedures
27 approved by the department; and (C) there remain no hazardous sub-
28 stances or wastes at the site of the industrial establishment;

29 (7) "transfer" means to be a party to or subject to a

1 transaction, proceeding, or agreement under which an industrial estab-
2 lishment undergoes change in ownership, except for corporate reorgani-
3 zation not substantially affecting the ownership of the industrial
4 establishment, including but not limited to sale of stock in the form
5 of a statutory merger or consolidation, sale of the controlling share
6 of the assets, the conveyance of the real property, dissolution of
7 corporate identity, financial reorganization, and initiation of bank-
8 ruptcy proceedings.